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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. YENI HARRIS et al., Defendants and Appellants.	A091681 (San Mateo County Super. Ct. No. SC44958)

Yeni Harris and Valeriano Valon appeal their convictions for drug related charges arising out of their pleas of no contest. They contend that the trial court erred in denying their motion to suppress evidence. Valon also contends that the trial court erred in denying his motion to dismiss for interference with his right to counsel. We affirm.

PROCEDURAL BACKGROUND[1]

In an information filed April 22, 1999, Harris and Valon were each charged with one count of possessing cocaine base for sale in violation of Health and Safety Code section 11351.5. They filed a motion to suppress evidence, which was denied. Thereafter, Valon filed a motion to dismiss for interference with his right to counsel, which also was denied. On April 17, 2000, Harris pleaded no contest to a reduced charge of cocaine possession (Health & Saf. Code, § 11350, subd. (a)) and was sentenced to three years probation and sixty days in jail. The same day, Valon pleaded no contest to one count of possessing cocaine base for sale and was sentenced to three years in prison.

[1] We summarize the relevant facts below, in connection with our discussion of each issue on appeal.

DISCUSSION

Suppression Motion

Evidence Presented at the Hearing

At a two day hearing on the defendants' motion to suppress evidence, six police officers and both defendants testified to the following: In 1998, the San Francisco Police Department was conducting an ongoing investigation of drug transactions involving a dealer known as "Bali," later identified as defendant Valon.[2] Valon was known to have two residences, at 300 and 1620 Palmetto Avenue in Pacifica. On November 3, 1998, two undercover officers, Inspectors Marcic and Hanley, followed Valon from Pacifica to the Mission District in San Francisco where he spoke to a man outside the Thayer Hotel, then drove to a house at 3863 Martin Luther King Way in Oakland. The officers received a tip from a confidential informant that "Bali" was in Oakland to pick up narcotics for sale in San Francisco. Valon twice went back and forth from the house to his minivan, then drove off with a passenger. The police followed him back to the Mission District, where he again met the man to whom he had spoken earlier outside the Thayer Hotel; the two appeared to make some sort of exchange. Valon then drove to the Tenderloin, where he contacted Hugo Villareal, a known crack cocaine distributor. Villareal handed Valon some money, and Valon and his companion went back to their van. Valon drove a short distance, and again met up with Villareal. This time, Valon handed something to Villareal through the van window. Based upon his experience, Inspector Marcic believed that he had just observed a narcotics transaction.

Later that month, the police received another tip that Valon had picked up a shipment of cocaine in Los Angeles, and would be back in Pacifica on the morning of November 17, 1999. At 5:00 a.m. that day, Sergeant Delgadillo saw a man and a woman drive up to 1620 Palmetto. They got out of the car with a suitcase, and appeared startled by the presence of another car on the street. Later that morning Delgadillo followed

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[2] Officers initially believed that Bali was Valon's brother, Guillermo, but by November 1998, they knew Valon went by the name Bali.

Valon from 300 Palmetto to 3863 Martin Luther King Way in Oakland. Valon carried a white plastic bag into the house, which Delgadillo believed contained narcotics. When Valon left the house empty handed, Delgadillo was instructed by Inspectors Marcic and Hanley to follow Valon and detain him while Marcic obtained a search warrant for the Oakland residence.

At 10:00 a.m. Delgadillo and two other officers stopped Valon near the Bay Bridge toll plaza. The police searched Valon's car, but found nothing illegal. Delgadillo handcuffed Valon, put him in his patrol car and drove him to the house in Oakland where they sat and waited for 20 to 30 minutes. He was then taken into the house and handcuffed to a piece of exercise equipment in the living room, where he sat for close to an hour while officers searched the house.[3] Delgadillo then took Valon back outside, still handcuffed, and asked him to sign a consent form allowing the police to search 300 and 1620 Palmetto Avenue.[4] Valon signed the form at 11:30 a.m., 90 minutes after his initial detention.[5]

After Valon signed the consent form, police used Valon's key to enter 1620 Palmetto.[6] As they were searching, defendant Harris entered the front door, called out for Bali, and started coming up the stairs. The police identified themselves, and asked if they could conduct a pat down search for weapons. She was then asked in Spanish if the officers could search the diaper bag she was carrying. With her consent, the bag was

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[3] The search uncovered eight pounds of cocaine and one pound of crack cocaine. Valon's fingerprints were on the package containing the cocaine.

[4] Valon testified that the consent form had only the 1620 Palmetto address filled in when he signed it. The court believed the officer's testimony that both addresses were filled in.

[5] Valon testified that Delgadillo drove him around Oakland for about 30 minutes, then went to the house on Martin Luther King Way and left him sitting in the car for another 20 minutes, then brought him into the house and left him handcuffed to the exercise equipment for another 30 minutes before taking him outside to sign the consent form. Under either version, the time from his detention to the signing of the consent form was approximately 90 minutes.

[6] Just before police began searching 1620 Palmetto, Marcic obtained a search warrant for both Pacifica residences. The trial court denied the motion to suppress on the ground that the defendants consented to the searches. It was not called upon to consider the validity of the search warrant.

searched and $16,000 in cash was discovered inside. A female officer then took her to the bathroom and conducted a strip search. Harris was then seated in the living room. Later, Harris was asked for her consent to search 300 Palmetto. She gave her consent and gave an officer her keys, which were used to enter the house. A search of 300 Palmetto uncovered narcotics. Both defendants were arrested on the evening of November 17.

The defendants sought to suppress evidence found in Harris' diaper bag and during the searches of 1620 and 300 Palmetto.[7] They claimed that Valon had only given his consent for a search of 1620 Palmetto, and that Harris' consent to search her diaper bag and 300 Palmetto were not given voluntarily. In a supplemental motion filed after the first day of testimony on the motion to suppress, Valon asserted that he had been illegally detained, rendering his consent to search one or both Palmetto residences illegal as well.

The trial court ruled that Valon had been lawfully detained. It also made a factual finding that both Palmetto addresses were written on the consent form before Valon signed it, but that in any case, Harris gave consent for the search of 300 Palmetto and for the search of her diaper bag. The court further stated: "it does seem pretty clear that by the time the police are searching 300 Palmetto, the search warrant has arrived or is about to arrive."

Denial of Motion to Suppress Evidence - Valon

Valon claims that the time he spent in the company of the police, whether labeled a detention or an arrest, was illegal. He contends the police had no articulable suspicion that he had committed or was about to commit a crime, which was required to detain him, nor any probable cause to arrest him. He further contends that, even if the police had a proper basis for detaining him initially, his detention was unconstitutionally prolonged and he was impermissibly transported, transforming his detention into a de facto arrest, again without probable cause. We agree that Valon's initial detention, which was

[7] They sought to suppress the $16,000 found in Harris' diaper bag, clear plastic baggies, a digital scale and packaging materials found at 1620 Palmetto, $931 and one ounce of cocaine base found at 300 Palmetto, and statements made by Harris at 1620 Palmetto.

justified, became a de facto arrest when he was handcuffed, transported, and held for 90 minutes while police attempted to obtain a search warrant for the Oakland residence. We also conclude, however, that the police had probable cause to arrest Valon. Therefore, neither his consent to search nor evidence gathered during the searches were the fruit of an illegal detention. Accordingly, the trial court properly denied the motion to suppress evidence on the grounds raised by Valon.

Under the Fourth Amendment's prohibition against unlawful searches and seizures, contacts between the police and civilians fall into three classes, varying in their degree of intrusiveness from minimal to severe. First, there are consensual encounters, which are not regarded as seizures, and may be initiated without any objective justification. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784 (*Wilson*), citing *Florida v. Royer* (1983) 460 U.S. 491.) Next are contacts commonly referred to as detentions, which are limited in duration, scope and purpose, and may be undertaken only if the police possess an objectively reasonable and articulable suspicion that the person detained has committed or is about to commit a crime. (*Wilson, supra,* at p. 784; *People v. Souza* (1994) 9 Cal.4th 224, 231.) And finally, "there are those seizures of an individual which include formal arrests and restraints on an individual's liberty which are comparable to an arrest, and which are constitutionally permissible only if the police have probable cause to arrest the individual for a crime." (*Wilson, supra,* at p. 784; *People v. Price* (1991) 1 Cal.4th 324, 410.) We are concerned here with the second and third classes of police-civilian encounters.

"A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in the light of the totality of the circumstances, provides some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza, supra*, 9 Cal.4th at p. 231.) These temporary detentions, sometimes referred to as investigative stops, "may, at some point, become so overly intrusive that [they] can no longer be characterized as a minimal intrusion designed to confirm quickly or dispel the suspicions which justified the initial stop." (*In re Carlos* (1990) 220 Cal.App.3d 372, 384.) A detention that exceeds the

permissible scope of an investigative stop becomes a de facto arrest of the detainee, requiring probable cause. (*Ibid.*) In "distinguish[ing] permissible investigative detentions from impermissible de facto arrests . . . [we] focus on whether the police diligently pursued a means of investigation reasonably designed to dispel or confirm their suspicions quickly, using the least intrusive means reasonably available under the circumstances." (*Id.* at pp. 84-85.) Evidence obtained as a result of a detention that exceeds the appropriate limits will not be automatically excluded if the officer had probable cause for an arrest. (*People v. Campbell* (1981) 118 Cal.App.3d 588, 596-598 (*Campbell*).)

Valon contends that his detention on November 17, 1999 exceeded the permissible boundaries of an investigative stop and became an arrest because it lasted too long,[8] his keys were taken away, he was handcuffed, placed in a patrol car, driven around, and transported to another location, all while the police waited to obtain a search warrant for a residence that was not his. Respondent, on the other hand, maintains that the police conducted a diligent investigation, designed to quickly dispel or confirm their suspicions of criminal activity, using the least intrusive means available.

Respondent contends that the steps taken by the police during Valon's detention were similar to those found to be acceptable in *People v. Huerta* (1990) 218 Cal.App.3d 744. In *Huerta*, the defendant was detained after he entered a house where a police search was already under way, and drugs had already been discovered. The police asked him to identify himself. The defendant appeared nervous, and was not able to give an explanation for his presence at the house. He gave the police his identification, which did not completely satisfy the officer, who was concerned the defendant might be armed. He pat searched the defendant, and discovered a large bulge in his shirt pocket, which turned out to be a roll of $3,100. Upon a request for further identification, the defendant gave an

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[8] Valon complains that he was detained for five hours before police finally searched both Palmetto residences. As noted by respondent, however, the time he was held *after* giving his consent to search is not relevant to whether the consent was valid. Thus, we consider whether the 90 minutes that elapsed from Valon's stop to the time of his consent constituted an impermissibly lengthy detention.

address and phone number. The person who answered the phone told the officer the defendant did not live there, and gave him defendant's number and address. A call to that number reached an answering machine with a recording from someone with defendant's first name. The police still suspected the defendant was trying to hide something, and called the police station to run a warrant check. Because there were too many people in the system with defendant's last name, his warrant status could not be established. These calls took 10 to 15 minutes. (*Id.* at pp. 746-747.)

The officer explained to the defendant that he was concerned about his reason for being at the residence where drugs had been found, especially in light of the large amount of cash he was carrying. He again asked the defendant to be truthful about who he was and why he was there. The defendant then gave his correct address and phone number, and explained that he had additional identification in his pickup truck. He gave the police permission to search his vehicle, where they found another $4,550 in cash, which the defendant said he needed for his work in construction. The search of the truck took 5 to 10 minutes. The officers spent another 10 to 15 minutes discussing how to proceed with their investigation. They then asked defendant for his consent to search his residence, which he gave. A search of his residence uncovered methamphetamine, cash, drug paraphernalia, drug transaction records, and weapons. (*Huerta*, *supra*, 218 Cal.App.3d at pp. 747-749.)

Huerta sought to suppress the evidence, claiming his consent to search his truck and house were the product of an unlawful detention. The court reviewed the police conduct, and determined that they had acted reasonably and with due diligence at every step of the investigation. It held that a detention of 25 to 40 minutes, during which time the police were actively seeking to ascertain the defendant's identity and whether he was involved in illegal activity, was not unduly prolonged. (*Huerta*, *supra*, 218 Cal.App.3d at pp. 750-752.)

In contrast, we consider *Campbell*, *supra*. There, police began surveillance of the defendant's residence as part of an ongoing narcotics investigation, during which police had discovered defendant's ties to a nationwide drug trafficking ring. As they followed

defendant and a co-defendant throughout the day, they observed highly suspicious behavior, including evasive driving suggesting an effort to detect surveillance, comings and goings from various residences with much furtive glancing about, and the transportation of a package that was repeatedly hidden from passersby. Eventually, defendant and his co-defendant drove in separate cars back to a property owned by defendant. They emerged with three pieces of luggage, which they put in defendant's car. They got in and drove around for an hour and a half, again appearing to be trying to detect surveillance. They eventually arrived at the Los Angeles airport, where they separated. After defendant bought a ticket, checked his luggage and went to the boarding area, he was stopped by an officer who told him that he was being stopped as part of a narcotics investigation. The officer had his gun drawn, and told defendant to put his hands on the wall. The officer then put away his gun and pat searched the defendant. In a conversation lasting a minute, the officer asked defendant if he could search his luggage, explaining that if no narcotics were found he would be free to go. Defendant agreed. The officer handcuffed defendant, because he still feared for his safety. Defendant then stated that he had no luggage, explained that his wife had dropped him off at the airport, and said he was traveling alone. Defendant's luggage was retrieved and he and his co-defendant were taken to the airport's narcotics division office. The officers testified that they did not take the defendants to the police substation because they were not under arrest. Defendant was eventually placed in a holding tank at the airport's police substation while police searched the co-defendant's luggage, where they found drugs. (*Campbell, supra,* 118 Cal.App.3d at pp. 591-593.)

In analyzing whether Campbell had been detained or arrested, the court determined that the police action up to the point of handcuffing and removing defendant to another area of the airport was justified as a temporary detention. However, once the defendant was handcuffed and moved without any justification such as a concern for police or suspect safety (see *People v. Courtney* (1970) 11 Cal.App.3d 1185, 1192 [police justified in moving suspect to another location to get away from hostile crowd]), the detention became an arrest. (*Campbell, supra,* 118 Cal.App.3d at pp. 596-597.) The

court also held, however, that the facts the police uncovered and the observations they made during their investigation "cumulatively constituted a basis for reasonably believing that these defendants were presently engaged in the trafficking of narcotics and were probably part of the narcotics ring under investigation." (*Id.* at p. 597.) Accordingly, the police had probable cause to arrest the defendant, rendering his subsequent consent to search his residence valid. (*Id.* at p. 598.)

Finally, we consider *People v. Gentry* (1992) 7 Cal.App.4th 1255. There, defendant was babysitting in an apartment that the police had reason to believe contained narcotics. The police entered the apartment without a warrant, and detained everyone present for three and one half hours until a warrant was obtained. Defendant contended that the three and one half hour detention was illegal, and sought to suppress incriminating statements he made during that time. In analyzing the detention, the court stated: "appellant's seizure was not limited in duration; it lasted three and one-half hours, and the police intended to restrain him and the other occupants for as long as necessary until a warrant could be issued. The seizure was not limited in scope; appellant had absolutely no freedom of movement but was handcuffed and sat in a room under police surveillance. The seizure was not limited in purpose; appellant was not detained for investigatory purposes of determining his identity and relationship to the premises and its residents. Appellant was 'arrested,' not 'detained.'" (*Id.* at pp. 1266-1267, fn. omitted.) Because it found no evidence of exigent circumstances to justify the extent of the defendant's detention, and further found that the police had no probable cause to arrest the defendant, the court concluded that his statements should have been suppressed. (*Id.* at p. 1268.)

In the matter before us, the police held Valon in handcuffs for 90 minutes while awaiting the issuance of a search warrant for the house in Oakland. Aside from the initial stop and search of Valon's car, no investigatory steps were taken with regard to him during that period. Rather, he was driven around then left handcuffed to an exercise machine, merely for the purpose of keeping him in custody until a search warrant could be obtained. The police action here can be readily distinguished from that in *Huerta*,

where the police actively pursued efforts to establish the defendant's identity for the full 25 to 40 minutes he was detained. Rather, as in *Gentry* and *Campbell*, Valon's seizure was not limited in duration, scope or purpose.

Our inquiry does not end on this point, however. If the police had probable cause to arrest Valon, his subsequent consent to search was not invalidated by an unreasonably prolonged detention. When a detention exceeds appropriate limits, evidence obtained as a result of the detention will not automatically be excluded if the officer had objective probable cause to arrest. (*People v. Adams* (1985) 175 Cal.App.3d 855, 863-864.)

Here, the police testified that it was their intent only to detain Valon. Inspector Marcic even went so far as to testify that "[a]s far as we were concerned, there was no crime committed [at the time Valon was stopped]." When questioned further, however, he testified that he believed Valon had delivered narcotics to the Oakland residence, and agreed that he could have arrested him for committing a felony.

Probable cause to arrest exists when the facts and circumstances known to the arresting officer would warrant a person of reasonable caution to believe that a crime was being or had been committed. (*Hunter v. Bryant* (1991) 502 U.S. 224, 228; *People v. Souza*, *supra*, 9 Cal.4th at p. 230.) In this case, the police had been investigating Valon's involvement in narcotics sales for several months. Two weeks before his arrest, police had observed Valon engaging in activities that they believed, based upon their experience, were drug transactions. The day of the arrest, operating on a tip from a previously reliable informant that Valon would be returning in the morning with drugs from Los Angeles, police had startled someone arriving at Valon's residence with a suitcase. Later that day, Valon drove to the house in Oakland where he had been two weeks before. He was carrying a white plastic bag that the police believed contained narcotics, which he did not have when he left the house soon thereafter. The police then followed and stopped Valon. Although the police characterized the stop as a detention, the facts and circumstances provided a reasonable basis for believing that a crime had just been committed. Accordingly, there was probable cause to arrest Valon, thereby vitiating his claim that his detention was illegal.

Denial of Motion to Suppress - Harris

Harris claims that she was illegally detained, so that any consent she gave to search 300 Palmetto was invalid. We disagree. The police were present at 1620 Palmetto with Valon's consent, and pursuant to a search warrant. Harris let herself into the downstairs front door of the residence and proceeded up the stairs calling out for Bali. The police asked her to come up the rest of the stairs, patted her down, and asked her permission to search her diaper bag. In *People v. Glaser* (1995) 11 Cal.4th 354, 365, the California Supreme Court held that an "initial brief detention" of a person who parked in the driveway and was opening the gate of a residence that was being searched "was justified by the need to determine what connection defendant, who appeared to be more than a stranger or casual visitor, had to the premises, and by the related need to ensure officer safety and security at the site of a search for narcotics."

As did the defendant in *Glaser*, Harris relies heavily on *People v. Gallant* (1990) 225 Cal.App.3d 200, in support of her assertion that her detention was illegal. In *Gallant*, the defendant parked his car in front of a house that was being searched, walked up to the front door and knocked. Although nothing in his manner was suspicious, an officer answered the door with gun drawn and ordered defendant inside, where he was patted down and detained. (*Id*. at pp. 203-204.) The court concluded that the detention was illegal, because no articulable facts connected the defendant to the drugs that had been found inside the house. "In the absence of evidence of their particular involvement in the illegal activity, friends, family and the Fuller Brush man should be free to knock on the door without being ordered inside at gunpoint and frisked." (*Id.* at p. 208.) The court in *Glaser* found *Gallant* to be readily distinguishable, as do we. In this case, as in *Glaser*, the defendant did not merely walk up to the front door and knock. Rather, she let herself in without knocking and walked up the inside stairs, calling out for Bali, a resident of the house with suspected drug connections. She clearly had some connection to the premises, and was no mere stranger. Harris' protestation that she could not have posed a danger because she was accompanied by small children is not convincing. The police must have leeway to briefly detain a person who appears to be more than a casual visitor

in order to insure officer safety and to ascertain that person's connection to the premises, regardless of how innocent the person may appear. Once a large amount of cash was discovered in Harris' diaper bag, the police were justified in further detaining her to assess how to proceed. (*Huerta, supra,* 218 Cal.App.3d at p. 751.)

Harris next maintains that she did not voluntarily consent to the search of 300 Palmetto. On a motion to suppress evidence the prosecution bears the burden of showing that the defendant gave his or her consent to search freely and voluntarily, and not merely in submission to an express or implied assertion of police authority. (*People v. James* (1977) 19 Cal.3d 99, 106. Whether consent is voluntary is a question of fact to be decided based upon the totality of the circumstances, and a trial court's findings on the question will be upheld on appeal if supported by substantial evidence. (*People v. Aguilar* (1996) 48 Cal.App.4th 632, 639-640.)

With no support in the record, Harris contends that "the police tactics were clearly intimidating and any 'consent' elicited was the product of submission to authority." However, there was no evidence that the police ever used a threatening or inappropriate tone with Harris. When it became clear that she did not speak English, she was asked in Spanish whether she would consent to having her diaper bag searched. The search led to the discovery of cash, and the subsequent search of her body. While the search was doubtless unpleasant for Harris, there was no evidence that she was treated harshly so as to intimidate her beyond that which would be expected under the circumstances. She was then seated in the living room without handcuffs, and asked whether she would consent to a search of her residence at 300 Palmetto. She consented and gave the officer her keys so that the door would not be damaged. The trial court here found that Harris had voluntarily consented to the search of 300 Palmetto. The evidence supports the finding. Also, as noted above, the trial court held that Valon had given his consent to search 300 Palmetto, a consent we have found was validly obtained. Accordingly, the trial court properly denied the motion to suppress evidence.[9]

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[9] We are constrained to point out the somewhat academic nature of the preceding discussion, given the fact that the police obtained a search warrant for both Palmetto Street addresses, which

Motion to Dismiss for Interference with Right to Counsel

Valon filed a motion to dismiss, claiming the prosecution had interfered with his right to counsel by entering into negotiations with him without the presence of his lawyer. Testimony at the hearing on Valon's motion established that after his motion to suppress was denied, Valon met with two San Francisco police inspectors without his attorney present. Valon offered to provide police with information about other drug dealers in exchange for a more lenient sentence. Valon told the police that he did not want his attorney to know about their conversation or his cooperation.[10] After the meeting, one of the officers informed the prosecutor of Valon's interest in working out a deal. The prosecutor indicated he was not interested. The officer met with Valon again to see if he could get more significant information about higher level drug distributors. Valon provided the names, addresses and phone numbers of several people he claimed were drug dealers, along with other information. The police told him he also had to participate in a drug transaction in San Mateo County. When informed of the additional information, the prosecutor, who was unaware that Valon had told the police not to involve his attorney, said he would think about whether to make a deal. The next morning, the prosecutor faxed a letter to Valon's attorney, explaining that he would not argue for a more lenient sentence, but that he would also not completely ignore Valon's cooperation. Ultimately, no transaction was set up in San Mateo, the information provided by Valon was not used by the officers, and the prosecution agreed not to use it

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defendants never sought to traverse. There was a fair amount of confusion and imprecision in the testimony concerning when the search at the first residence began, and the trial court was never called upon to make a specific ruling on this point. Nonetheless, the court did volunteer that "by the time the police are searching 300 Palmetto [the second residence to be searched], the search warrant here has arrived or is about to arrive." In addition there was at least some evidence that the search of 1620 Palmetto [the first residence to be searched] began at 2:45 p.m., 15 minutes after the warrant was issued.

[10] Valon testified that the police approached him, whereas the police testified that he initiated the contact. Valon also testified that it was one of the officers who told him not to tell his attorney about their meeting, whereas the police testified it was Valon who insisted his attorney not be told. The trial court believed the officer's version on both points.

against him at trial. The trial court found no prejudice to Valon, and declined to dismiss the case.

Valon contends the trial court should have dismissed the case against him because the prosecution intentionally interfered with his constitutionally protected right to be represented by counsel at every stage of the proceedings. As he concedes, however, dismissal for such interference is only warranted upon a showing of prejudice. (*People v. Hayes* (1988) 200 Cal.App.3d 400, 411-412.) "Absent some adverse effect upon the effectiveness of counsel's representation or some other prejudice to the defense, there is no basis for imposing a remedy in a criminal proceeding. Absent demonstrable prejudice or substantial threat thereof, dismissal of the indictment is plainly inappropriate even though the violation may have been deliberate. The remedy in a criminal proceeding is limited to denying the prosecution the fruits of its transgression." (*People v. Tribble* (1987) 191 Cal.App.3d 1108, 1118.)

Even assuming that Valon's contact with the police, which he initiated, constituted an interference with his right to counsel, he has demonstrated no prejudice to his cause from the contact. The information he provided to the police was never used by them, and was not going to be used against Valon if the case went to trial. Furthermore, the three-year prison sentence Valon ultimately received was the sentence the prosecutor indicated it believed was appropriate and the sentence the trial court indicated it would impose when sentencing was discussed one month before Valon ever spoke to the police. No showing was made that his attorney's ability to represent him effectively was in any manner compromised by Valon's discussions with the police. Accordingly, dismissal would have been inappropriate and this motion was also properly denied.

DISPOSITION

The convictions are affirmed.

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Pollak, J.

We concur:

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Corrigan, Acting P. J.

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Parrilli, J.